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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,748	02/15/2007	Robert Henri-Marcel Stouffs	19790-008US1 CER03-0015	8191

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EXAMINER	
GWARTNEY, ELIZABETH A	

ART UNIT	PAPER NUMBER
1781	

NOTIFICATION DATE	DELIVERY MODE
08/30/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No.	Applicant(s)	
	10/576,748	STOUFFS ET AL.	
	Examiner	Art Unit	
	ELIZABETH GWARTNEY	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *6/21/2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *14,16-18 and 20-37* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *14,16-18 and 20-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application.
6) ☐ Other: _____.

DETAILED ACTION

1. The Amendment filed June 21, 2010 has been entered. Claims 14, 16-18 and 20-37 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 14, 16-18 and 20-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beauregard et al. (US 6,458,401).

Regarding claims 14, 16-17, 20 and 33 and Beauregard et al. disclose a process for preparing powder containing crystalline particles of maltitol comprising the steps of:

(a) continuously mixing maltitol syrup having a dry mater content of at least 70% by weight and a maltitol content of at least 85% by weight on a dry matter basis, the mixing being effected by simultaneously dispersing the maltitol syrup and maltitol containing seeds into an open rotating bed containing maltitol based granules (C2/L35-45);

(b) drying the granulated product obtained in a fluidized bed to achieve a residual moisture content of ***not more than*** 2% (C3/L47-48);

(c) grinding the granules to the required particle size and then sorting the particles by sifting (C3/L49-51); and

(d) recycling the particles eliminated by sifting to the granulator for use as maltitol containing seeds (C3/L49-52).

Beauregard et al. disclose that an air atomizing nozzle is used to spray the aqueous maltitol syrup onto the rotating bed in the granulator (C3/L26-28). Given Beauregard et al. disclose an open bed wherein air is used to disperse maltitol syrup onto maltitol seed material, it is clear that the mixing process takes place in a fluid bed.

Beauregard et al. disclose that the maltitol syrup and seed material are introduced into the granulator to achieve a seed/syrup weight ratio of 4 parts seed to 1 part maltitol syrup (C4/L47-51).

Regarding claim 18, Beauregard et al. disclose all of the claim limitations as set forth above and that the matured granules are submitted to a rough grinding and dried in a fluidized bed using air at about 90°C (C4/L65-67).

Regarding claims 21-23, Beauregard et al. disclose all of the claim limitations as set forth above. Beauregard et al. also disclose that that the temperature of maltitol syrup is 80°C (C3/L20-21).

Regarding claims 24-26, Beauregard et al. disclose all of the claim limitations as set forth above. Given Beauregard et al. disclose a process for preparing maltitol substantially similar to that presently claimed, it is clear that the powder containing crystalline particles of maltitol would intrinsically have maltitol content from about 90% w/w to about 99.5%.

Regarding claims 27- 30, Beauregard et al. disclose a process for preparing powder containing crystalline particles of maltitol comprising the steps of:

(a) loading powder containing crystalline maltitol, i.e. seed material, into an open rotating bed (C3/L16-28);

(b) adding maltitol syrup into the open bed, wherein said maltitol syrup has a dry substance content of about 70% (C3/L16-28);

(c) spraying said maltitol syrup into the open bed to coat said see material, wherein the maltitol syrup is sprayed onto the maltitol seed material using an air atomizing nozzle at a temperature of at least 80°C (C2/L54-57, C3/L16-28);

(d) drying said coated seed material in a fluidized bed to achieve a residual moisture content of ***not more than*** 2% (C3/L16-50);

(e) grinding the granules to the required particle size and then sorting the particles by sifting (C3/L49-51); and

(d) recycling the particles eliminated by sifting to the granulator for use as maltitol containing seeds (C3/L49-52).

Regarding claims 31-32, Beauregard et al. disclose all of the claim limitations as set forth above. Given Beauregard et al. disclose a process for preparing maltitol substantially similar to that presently claimed, it is clear that the powder containing crystalline particles of maltitol would intrinsically have maltitol content from about 95% w/w to about 97%.

Regarding claims 34-37, Beauregard et al. disclose all of the claim limitations as set forth above. Beauregard et al. also disclose sugar free shortbread cookies and oatmeal cookies comprising 18% by weight maltitol (C5/Example 2) and a tablet comprising 99% maltitol (C4/L11-16).

Response to Arguments

6. Applicant's arguments filed June 21, 2010 have been fully considered but they are not persuasive.

Applicants explain that while claim 14 require that the claimed process occur in a fluid bed, Beauregard et al. (US 6,458,401) discloses "using separate devices (i.e. the open rotating receptacle, the ripening device, and the fluidized bed for drying) for the different steps of the method." Applicants argue that Beauregard et al. does not disclose that all of the process steps could be performed in a fluid bed.

First, while applicants' claims a process that "takes place in a fluid bed," it is not clear how the particle size of the granulated maltitol product is reduced inside using a fluid bed. In fact, applicant is directed to page. 7, line 12 of the instant specification wherein it is stated that the granulated and dried product ***is milled with a Retsch SK 100 mill***. It is clear that not all of the claimed steps of claim 14 are completed in a fluid bed.

Second, while present claim 14 recites "wherein said process takes place in a fluid bed," there is nothing in the claim that limits the process apparatus to ***only*** a fluid bed. In other words the process could take place in a fluid bed ***and*** a grinding mill and still meet the requirements of taking place in a fluid bed.

Applicants explain that Beauregard et al. discloses that maltitol syrup is added to an open rotating receptacle having maltitol seeds while the present claims require that maltitol powder be turbulated with maltitol syrup. Applicants argue that one of ordinary skill in the art would "realize that maltitol powder cannot be turbulated in an open receptacle."

Note, Beauregard et al. disclose that the maltitol seeds are obtained by recirculating a fraction of the solidified maltitol product (see Example 1/C4/L52-55) wherein the solidified maltitol product is ground and dried maltitol granules, i.e. maltitol powder (Example 1/C4/L65-C5/L9). Given Beauregard et al. disclose maltitol seeds wherein the seeds are maltitol powder, clearly it was contemplated that maltitol powder could be turbulated in an open receptacle.

Applicants explain that the turbulating step of the pending claims results in the coated maltitol being dried. On the other hand, applicants find that Beauregard does not disclose simultaneous disbursement and drying of the maltitol using turbulating gas.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., simultaneous disbursement and drying of the maltitol) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case, present claim 14 requires both a step of (a) dispersing or turbulating maltitol powder and maltitol-containing syrup ; and (b) drying the coated maltitol.

Applicants submit that process of Beauregard et al. does not results in solidified maltitol rather, crystalline maltitol.

Here, it is the Examiner's position that crystalline maltitol ***is*** a type of solidified maltitol. Further, in Example 1 (C4/L52-55), Beauregard et al. refers to the crystalline particles of maltitol as the "solidified product."

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH GWARTNEY whose telephone number is (571)270-3874. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./
Examiner, Art Unit 1781

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1781